

**REMARKS**

Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and the following remarks. Claims 122-162 were previously pending in the application. Claims 122, 135, 136, 142, 148, 149, 155, 161 and 162 are independent claims. Applicants have added claim 163-165 directed to other originally-disclosed embodiments. Applicants submit that support for new claims 163-165 may be found throughout the specification, by way of example only, please see Figs. 5, 6, 9, 11, 13 and 18 and the corresponding description of these figures in the specification. Accordingly, Applicants submits no new matter has been added by way of this amendment.

**Rejections under 35 USC § 103**

Claims 122-162 have been rejected under 35 U.S.C. § 103(a), in view of US Patent Number 5,136,501 to Silverman ("Silverman"), and various instances of Official Notice. Applicants traverse the various instances of Official Notice asserted in the Office Action and explicitly reserve the right to address each individually at a later time should the need arise. Applicants submit that Silverman's system is not analogous to the systems or methods recited in the pending claims and the cited reference fails to render obvious each of the limitations of the pending claims, alone or in view of the traversed instances of Official Notice.

Applicants respectfully submit Silverman's trading/exchange system is fundamentally different from the system recited in the claims.

Applicants submit that the recited system is operative to receive, *inter alia*:

1. a selection of a subject of goods or services from a customer;
2. a conditional purchase offer from the customer; and
3. a payment identifier specifying a financial account for use in providing payment for said goods or services if said conditional purchase offer is accepted....

Applicants note that in the system recited in independent claim 122, a payment identifier is received for use in providing payment if a particular conditional purchase offer is accepted. As such, Applicants submit that Silverman's instrument trading system is not analogous to the claimed system for effectuating a customer's conditional purchase offer for goods or services.

In contrast to the system recited in the claims, Silverman's system relates to matching systems for effectuating trades of trading instruments....(See, Silverman, "Technical Field", Col. 1, lines 19-26). However, Applicants note that Silverman like many other electronic instrument trading systems manages a trader's credit account data internally. Often, a customer funds an account that may be hosted by the system manager. For example, the credit accounts discussed in Silverman or an electronic stock brokerage account, such as TD Ameritrade. Funding the trading accounts occurs independently from requests to trade, buy or sell, financial instruments.

There is a fundamental distinction between Silverman's internal financial/credit account verification and the claimed system that receives a payment identifier specifying a financial account, wherein the specified financial account is charged if the conditional purchase offer is accepted.

More specifically, claim 122 recites, *inter alia*,:

A system for effectuating customer conditional purchase offers for goods or services comprising...a processor...operative with said program to:

receive a selection of a subject of goods or services from a customer utilizing the web page;

receive a conditional purchase offer...for purchasing goods or services...

receive a payment identifier specifying a financial account for use in providing payment for said goods or services if said conditional purchase offer is accepted, and subsequently:

if said conditional purchase offer is acceptable...charge said financial account for payment of said goods or services....

Accordingly, in effectuating the customer conditional purchase offers the system receives a payment identifier that is used for each conditional purchase offer if the offer is accepted. This is often not true in the realm of financial trading systems. As discussed in Silverman, the " system 20 validates the transaction request, processes the bid, offer, hit according to the rules of the market and attempts to find matches..." (See, Silverman, Col. 7 lines 5-10) Silverman also discusses that, "[i]f a match is found and satisfies all criteria including not exceeding the gross counterparty credit limit, then the trade is automatically executed." (See, Silverman, Col. 7 lines 12-15). With regard to gross counterparty credit limits Silverman discusses, "With respect to the assigned trading party credit limits, it is these limits which are used by the central system 20 to determine the anonymous gross counterparty credit limits which are used to control the completion of matching transactions." (See, Silverman, Col. 7, lines 55-60). Accordingly, Applicants submit that Silverman's check to see that gross counterparty credit limit not exceed is an internal account parameter verification and not analogous to "receiving a payment identifier specifying a financial account" as claimed.

The financial account distinction between Silverman's trading system and the client's system for managing customer conditional purchase offers for goods or services is further underscored by the time frame in which the respective applications were filed. More specifically, Silverman was filed in 1989; the instant application was filed on April 13, 1998. Both applications were filed on the early end of the e-commerce spectrum. However, as discussed above, Applicants

submit that Silverman's internal account parameter verification is not analogous with "receiving financial account data" for Silverman's transaction request. In the early development of the world wide web, there was significant customer reluctance to transmit specific financial account data over the world wide web. The resistance in this era was exacerbated with regard to effectuating web purchases for goods and services.

This section of the remarks is also particularly relevant in traversing the various instances of the Examiner's Official Notice. For example, with regard to independent claim 122, the Examiner asserts "Official Notice is taken that the use of the Internet ... to perform shopping, including negotiating and bidding functions is old and well known in the art.... " However, Applicants traverse this instance and the other instances of Official Notice and submit that two elements should be considered here:

1. As discussed above, the 1990s era-web included a great deal of reluctance on the part of customers to engage in online purchasing involving the their financial account data; and
2. The elements where Official Notice has been taken should be considered within the framework and context of the other elements recited in the various claims with consideration of the time frame when the application was filed.

Accordingly, Applicants traverse the Examiner's various instances of official notice and alleged modification to Silverman. More specifically, Applicants request that the Examiner provide a reference to support each instance of official notice has been asserted that the assertions are viable in the era when the application was filed. For example, Applicants request a reference supporting the assertion that shopping and/or bidding, within the context of receiving a customer's financial account data in a web setting is "old" or "well known" as alleged in the pending Office Action at the time the application was filed. (See, Office Action, page 7, ¶1).

In summary, Applicants submit that independent claim 122 recites elements that are not rendered obvious in view of the account data distinctions discussed above (e.g., Silverman's internal account parameter verification) taken alone or in combination with the various traversed instances of Official Notice. Therefore, Applicants submit the claimed systems and methods for effectuating customer conditional purchase offers for goods or services as recited in the claims are not taught, suggested, disclosed or rendered obvious by Silverman's market-based bid trading/exchange system alone or in combination with the various traversed instances of Official Notice in the Office Action.

### **CONCLUSION**

Accordingly, Applicants submit the claimed invention recited in independent claim 122 is patentably distinct from the cited reference alone, or in combination with the traversed instances of Official Notice for at least the reasons discussed herein, among others. Further, Applicants submit that independent claims 122, 135, 136, 142, 148, 149, 155, 161, 162 and new independent claims 163-164 are also patentably distinct from the cited references for at least similar reasons, among others. Applicants submit claims 123-134, 137-141, 143-147, 150-154 and 156-160, 165 which are directly or indirectly dependent on independent claims 122, 136, 142, 149, 155 and 164, respectively, are also distinguishable from the Silverman and traversed instances of Official Notice for at least similar reasons. Accordingly, Applicants request withdrawal of this ground of rejections.

Applicants submit, the reference cited and/or any official notice taken by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicants

respectfully submit that the supporting remarks and claimed inventions, claims 122-165, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference and the traversed Official Notice and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicants do not concede that any such elements are found in the prior art and/or within any official notice taken in the office action, and as such, Applicants assert that all such remaining and not discussed claim elements, all, also are distinguished over the prior art, including any official notice taken in the office action, and explicitly reserve the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered obvious by the cited reference. Accordingly, Applicants respectfully request allowance, and the reconsideration and withdrawal of the pending rejections.

#### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-010CT1. In the event that an additional extension of time is required, or which may be required in

addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-010CT1.

Respectfully Submitted,  
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